

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

TALISMAN DESIGNS, LLC, *et al.*,

Plaintiff,

v.

JACKSUN, *et al.*,

Defendant.

Civil Action No.

21-cv-777

(Judge Schwab)

**MOTION TO AMEND FINAL DEFAULT JUDGMENT AND
PERMANENT INJUNCTION [ECF NO. 69] TO INCLUDE DEFENDANT BLACKBOW**

Plaintiff hereby moves the Court to amend its October 31, 2022, Final Default Judgment and Permanent Injunction [ECF No. 69] to include Defendant BLACKBOW. In support thereof, Plaintiff states as follows:

I. INTRODUCTION

1. Plaintiff initiated this action against certain Defendants, including Defendant BLACKBOW, on June 15, 2021, through the filing of its Complaint for copyright infringement.

2. Defendant BLACKBOW is in default, and the prerequisites for a default judgment have been met. Plaintiff engaged in settlement discussions with Defendant BLACKBOW, but the attempts made to settle with Defendant BLACKBOW have proven unsuccessful and default against BLACKBOW has been entered for failure to answer. *Malkin Dec. 1 ¶ 7*. Accordingly, Plaintiff seeks to amend the Court's October 31, 2022 Final Default

¹ Refers to the Declaration of Brian Samuel Malkin filed herewith.

Judgment and Permanent Injunction [ECF No. 69] to include Defendant BLACKBOW liable on all counts of Plaintiff's Complaint.

3. In online counterfeiting cases such as the present case, a Final Default Judgment and Preliminary Injunction has been amended to include a non-settling Defendant. *See Airigan v. Abigail*, No. 19-cv-503 (WD Pa., June 24, 2020) (Fischer, J)[ECF No. 64](granting motion to amend default judgment to add non-settling defendant).

II. PRODEDURAL HISTORY

4. On June 15, 2021, Plaintiff filed its Application for a Temporary Restraining Order against Defendants, including Defendant BLACKBOW. On June 16, 2021, the Court entered a sealed Order granting the Temporary Restraining Order setting a Hearing to Show Cause Why a Preliminary Injunction Should Not Issue [ECF No.14] ("TRO") and Order granting Plaintiff's motion for alternative electronic service. [ECF No. 16] ("Alternative Service Order"). On June 21, 2021, the Temporary Restraining Order was extended and the Show Cause Hearing rescheduled [ECF No. 24].

5. Pursuant to the Court's Orders, Plaintiff served all Defendants subject to the Alternative Service Order, including Defendant BLACKBOW, with their respective Summons and a copy of the Complaint via electronic mail ("e-mail") and by posting copies of the same on the ferencelawsuit.com website. *See* Summons/Return of Service [ECF No. 34]

6. On July 23, 2022, the Plaintiff requested the Clerk of Court to enter default against all Defendants except but excluded BLACKBOW. [ECF No. 38] On July 28, 2021, the Clerk's default was entered. [ECF No. 43]

7. On October 25, 2022, Plaintiff filed its Motion for Entry of Final Default Judgment and Permanent Injunction Against Defendants, excluding Defendant BLACKBOW. [ECF No. 65] and the Court entered a Final Default Judgment and Permanent Injunction [ECF No. 52] against all Defendants, excluding Defendant BLACKBOW.

8. On October 31, 2022, the Court entered an Order granting Final Judgment and Permanent Injunction against all the Defendants, excluding BLACKBOW. [ECF No. 69]

9. Ultimately, Defendant BLACKBOW did not settle with Plaintiff. *See Malkin Dec.* ¶ 7. Plaintiff requested the Clerk enter default against Defendant BLACKBOW, and the Clerk's default was entered on November 7, 2022. [ECF No. 75]

10. BLACKBOW is the last active defendant as all the others have either been terminated or had judgment entered against them.

11. Plaintiff now moves the Court to grant Final Default Judgment and a Permanent Injunction against Defendant BLACKBOW and submits this Motion to Amend the Final Default Judgment and Permanent Injunction to Include Defendant BLACKBOW.

III. ARGUMENT

12. As alleged by Plaintiff, admitted by default, and established by the evidence submitted herewith, Defendant BLACKBOW operates and controls an e-commerce store via an Internet marketplace website under its seller identification name listed on Schedule "A" hereto (the "Seller ID"). As set forth more fully in Plaintiff's Application for Temporary Restraining Order and the supporting papers filed therewith, Defendant BLACKBOW promoted, advertised, offered for sale, and sold products which infringe on Plaintiff's registered copyright for the Pig Face Sculpture, U.S. Copyright VA 2-218-985 ("Plaintiff's Work").

13. This Court has subject matter jurisdiction over this action pursuant to the Copyright Act, 17 U.S.C. § 101. *See Complaint*, ¶ 10 [ECF No. 2] Personal jurisdiction over Defendant BLACKBOW and venue in this district are proper under 28 U.S.C. § 1391 as Defendant BLACKBOW directs business activities toward consumers within this district and causes harm to Plaintiff's businesses through the Internet based e-commerce store operating under its Seller ID. (*See Id.* at ¶¶ 20 - 21).

14. A court may order a default judgment pursuant to Fed. R. Civ. P. 55(b)(2) following the entry of default by the court clerk under Rule 55(a). *See Fed. R. Civ. P. 55*. Upon entry of default by the clerk, the well-pled factual allegations of a plaintiff's complaint, other than those related to damages, will be taken as true. *See Hritz v. Woma Corp.*, 732 F.2d 1178, 1180 (3d Cir. 1984); *see also Pair Networks, Inc. v. Lim Cheng Soon*, 2013 WL 452565, *1 (W.D. Pa., February 6, 2013). As explained in detail in Plaintiff's Motion for Default Judgment and Brief in Support ("Plaintiff's Motion for FDJ") (ECF Nos. 46 and 47), Plaintiff's evidence establishes all of the relevant factors. The evidence and the record against Defendant BLACKBOW clearly demonstrate that default judgment pursuant to Rule 55 of the Federal Rules of Civil Procedure should be entered against Defendant BLACKBOW.

15. This Court retained jurisdiction over this matter and the parties (including BLACKBOW), in order to construe and enforce this Judgment and permanent injunction. (*See ECF No. 69*, p.11). Furthermore, a Court that issues a permanent injunction retains continuing jurisdiction to modify it whenever the principles of equity require it to do so. *Exxon Corp. v. Texas Motor Exchange of Houston, Inc.*, 628 F.2d 500, 503 (5th Cir. 1980) (citing *U.S. v United Shoe Machinery Corp.*, 391 U.S. 244, 88 S.Ct. 1496, 20 L.Ed. 562 (1968)). Permanent injunctive relief is appropriate where a plaintiff demonstrates 1) it has suffered irreparable injury; 2) there is

no adequate remedy at law; 3) the balance of hardship favors an equitable remedy; and 4) an issuance of an injunction is in the public's interest. *eBay, Inc. v. MercExchange, LLC*, 547 U.S. 388, 392-93, 126 S. Ct. 1837, 164 L. Ed. 2d 641 (2006). As set forth in Plaintiff's Motion for Final Judgment and Permanent Injunction and the supporting papers filed therewith [ECF No. 63], Plaintiffs have satisfied each of these elements.

16. Permanent injunctive relief is necessary, as the permanent injunction will ultimately will protect Plaintiff's property interest in its copyright. Thus, modifying the previously issued Final Default Judgment to include Defendant BLACKBOW is appropriate.

17. Furthermore, as admitted by Defendant BLACKBOW by default, its Seller ID is the essential component of its online activities and the means through which it furthers its infringing activities and causes harm to Plaintiff. In order to effectuate the addition of Defendant BLACKBOW to the permanent injunction, it should be subject to all of the restraints previously ordered against Defendants in the court's Final Judgment and Permanent Injunction Order [ECF No. 69].

18. Because Defendant BLACKBOW failed to answer and did not cooperate with discovery [*See Malkin Dec.* ¶¶ 1 -6], and all of the evidence and law that supported the original judgment and permanent injunction are applicable to the Defendant BLACKBOW, Plaintiff additionally suggests that it would be appropriate to award Plaintiff the damages of \$2,000,000.00 against Defendant BLACKBOW, individually and distinctly, as these damages were found appropriate and were awarded against the Defendants in the court's Final Judgment and Permanent Injunction Order [ECF No. 69].

19. In view of the foregoing, Plaintiff submits that modification of the Court's Final Default Judgment and Permanent Injunction to include Defendant BLACKBOW is appropriate.

20. Like the previously granted motion for default judgment and permanent injunction [ECF No. 69], the Plaintiff does not believe a hearing is necessary in order to grant this motion. [ECF No. 63] (setting forth legal authority for motion for damages without a hearing).

21. An appropriate proposed Amended Final Judgment and Permanent Injunction is also filed herewith.

WHEREFORE, Plaintiff, respectfully requests the Court grant its Motion and amend the October 31, 2022, Final Default Judgment and Permanent Injunction [ECF No. 69] in accordance with the proposed order filed herewith, in order to include Defendant BLACKBOW.

Respectfully submitted,

Dated: November 17, 2022

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